

REMARKS

Applicants' attorney thanks the Examiner for his comments. Claims 40-41 are canceled in order to move this case forward according to the strong suggestion of the Examiner. Claim 1, the only independent claim, has been further amended to include the limitation of the top side formation index and the wire side formation index differing by less than about 11%. Support for this amendment is found in Claims 58-59 and these claims are accordingly canceled.

Applicants request the Examiner acknowledge the Reply to Advisory Action submitted on 24 October 2006 accompanying the Request for Continued Examination in this instant application. Applicants repeat the substance of the Reply to Advisory Action in the attached conspicuous Statement of Common Ownership.

The Examiner lists Claims 68-69 as being rejected in the Office Action Summary but fails to provide a basis for rejection in the Office Action. Applicants respectfully request an indication of allowability for at least these claims. If the Examiner has basis for rejecting Claims 68-69, then grounds for rejection should be clearly set forth in a non-final Office Action.

a) Claim Rejections Based On Polanco in view of Yeo

The rejection of Claims 1, 3, 7-8, 12-15, 17-18, 20 and 58-59 under 35 U.S.C. § 103 as obvious over Polanco in view of U.S. Patent 5,599,420 ("Yeo") is respectfully traversed.

Applicants have amended Claim 1 to include a limitation to the differences in the top side formation index and the wire side formation index. Formation index is a measurement of uniformity of formation (see page 30, line 20). Percent differences between the top side formation index and the bottom (wire) side formation index indicates the uniformity between the major surfaces of the nonwoven web. Such nonwoven webs with smaller formation index differences may have increased utility such as, for example, when both sides of the web are visible (see page 41, lines 9-24).

The Examiner states that fiber web uniformity naturally flows from Polanco and routine experimentation. This is not true nor is it a proper basis for an obviousness rejection. There are three requirements for a *prima facie* case of obviousness: 1) suggestion to combine, 2) expectation of success and 3) disclosure of all limitations. The combination of Polanco and Yeo do not teach or suggest Applicants' claimed invention. Polanco is silent on uniformity of formation, and Yeo teaches:

When the crimp is less than about 5 crimps per extended inch and the fabric has a low basis weight, the bulk of the fabric tends to be too low to form a distinct embossed pattern in the fabric, and when the crimp is greater than about 15 crimps per extended inch, the fabric tends to have a nonuniform density. Filaments and fibers having a medium crimp (5 to 15 crimps per extended inch) result in a fiber with sufficient bulk and uniformity. (Column 6, lines 39-46)

Clearly, Yeo requires a specific number of crimps per inch to produce a suitable uniform fabric. Applicants' invention produces a uniform web without this limitation. Those skilled in the art would not have been motivated to modify Polanco and Yeo to arrive at Applicants' invention. Those skilled in the art also would not have expected the process of Polanco to produce Applicants' uniform web, especially given the specific crimping requirements taught by Yeo. Finally, the Examiner has failed to positively provide a teaching or suggestion for the limitation of the top side formation index and the wire side formation index differing by less than about 11%. Therefore, the Examiner has failed to meet any of the requirements for a *prima facie* case of obviousness.

Additionally, Polanco cannot be applied in an obviousness rejection because it is not an available reference for a rejection under 35 U.S.C. § 103 under any section of 35 U.S.C. § 102 and particularly 35 U.S.C. § 102(e). The relevant law states

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person. (35 U.S.C. § 103(c), Conditions for patentability; non-obvious subject matter)

Polanco is not available as prior art because both the reference and the instant application, at the time of the claimed invention, were assigned to the same entity, Kimberly-Clark Worldwide, Inc. Please see attached Statement of Common Ownership on page 6 of this Amendment. Should the Examiner need any additional support for this statement, Applicants respectfully request the Examiner promptly contact Applicants' undersigned attorney by telephone regarding this matter.

Accordingly, this rejection should be withdrawn.

b) Claim Rejections Based on Polanco in view of Yeo and in further view of Shawver

The rejection of Claims 5-6 under 35 U.S.C. § 103(a) as obvious over Polanco in view of Yeo and in further view of U.S. Patent 5,540,976 ("Shawver") is respectfully traversed. Claims 5-6 depend for Claim 1 and are patentable for at least the same reasons.

The Examiner cites Shawver for allegedly teaching point bonding. The combination of Polanco, Yeo and Shawver does not disclose the limitation of the top side formation index and the wire side formation index differing by less than about 11%. Accordingly, this rejection should be withdrawn.

c) Claim Rejections Based on Polanco in view of Yeo and in further view of Shelley and Kobylivker

The rejection of Claims 9-13, 16 and 19 under 35 U.S.C. § 103(a) as obvious over Polanco in view of Yeo and in further view of U.S. Publication 2002/0089079 ("Shelley") and U.S. Patent 6,072,005 ("Kobylivker") is respectfully traversed. Claims 9-13, 16 and 19 depend for Claim 1 and are patentable for at least the same reasons.

The Examiner cites Shelley and Kobylivker for allegedly teaching laminates with different combinations or characteristics. Kobylivker is silent as to bicomponent fibers while Shelley states:

Webbs of homofilament crimped thermoplastic fibers are useful for various fluid handling or retaining materials and the like because of their open structure, resiliency, and economy of manufacture.

Particularly, the use of a single thermoplastic polymer in the making of the crimped fibers is good for economical and consistent manufacture. (paragraph 0002)

Applicants' fiber is **bicomponent** and not a mere homofilament. Clearly, Shelley teaches using the homofilament for reasons of cost and at least implicitly teaches away from using a bicomponent fiber. Thus, those skilled in the art would not have been motivated to modify the combination of Polanco, Yeo, Shelly and Kobylivker to arrive at Applicants' claimed invention. Accordingly, this rejection should be withdrawn.

d) Claim Rejections Based on Polanco in view of Yeo and in further view of Najour

The rejection of Claims 64-67 under 35 U.S.C. § 103(a) as obvious over Polanco in view of Yeo and in further view of U.S. Patent 6,379,136 ("Najour") is respectfully traversed. Claims 64-67 depend for Claim 1 and are patentable for at least the same reasons.

The Examiner cites Najour for allegedly teaching filaments of various denier. The combination of Polanco, Yeo and Najour does not disclose the limitation of the top side formation index and the wire side formation index differing by less than about 11%. Accordingly, this rejection should be withdrawn.

e) Conclusion

Applicants believe the claims, as presented, are in condition for allowance. If the Examiner detects any unresolved issues, then Applicants' attorney requests a telephone call from the Examiner, and a telephone interview.

Respectfully submitted,



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